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EXAMINER

COBANOGLU, DILEK B

ART UNIT PAPER NUMBER

3626

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/894,038

Applicant(s)

IMBO, SALLY

Examiner

Dilek B. Cobanoglu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/05/2001.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-20 have been examined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 rejected under 35 U.S.C. 102(b) as being unpatentable by Diaz et al. (U.S. Patent No. 5,890,128).

A. As per claim 1, Diaz et al. discloses a method for facilitating a user activity (Diaz et al.; col. 1, lines 5-12), comprising:

- i. Receiving personalized information from a user related to a user activity (Diaz et al.; col. 13, lines 32-36), said personalized information including a user address (Diaz et al.; col. 5, line 65 to col. 6, line 40) and at least one communication guideline (Diaz et al.; col. 14, lines 62-66);
- ii. Automatically transmitting a periodic message to said user (Diaz et al.; col. 7, lines 7-10) consistent with said at least one communication guideline (Diaz et al.; col. 14, line 67 to col. 15 line 3), said periodic message intended to cause at least one action by said user related to said user activity (Diaz et al.; col. 15, line 4); and

iii. Receiving responsive information from said user in response to said periodic message related to status of said at least one action (Diaz et al.; col. 15, line 4-5 and col.13, lines 42-44).

B. As per claim 3, Diaz et al. discloses a method according to claim 1, wherein said user activity relates to health fitness (Diaz et al.; col. 5, lines 41-50) and wherein said personalized information further includes information related to a health condition of said user (Diaz et al.; abstract and col. 7, lines 31-35).

C. As per claim 4, Diaz et al. discloses a method according to claim 1, wherein said user activity relates to nutritional consumption (Diaz et al.; col. 5, lines 58-61 and col. 13, lines 19-21).

D. As per claim 5, Diaz et al. discloses a method according to claim 1, wherein said user activity consisting of: undertaking preventative medicine measures (Diaz et al.; col. 7, lines 31-34).

E. As per claim 7, Diaz et al. discloses a method according to claim 1, wherein said at least one communication guideline is related to desired time for receipt of said periodic message (Diaz et al.; col. 14, lines 62-66).

F. As per claim 8, Diaz et al. discloses a method according to claim 1, wherein said personalized information is selected from a group of consisting of weight, height age and combinations thereof (Diaz et al.; col. 5, line 66 to col. 6 line 41).

G. As per claim 9, Diaz et al. discloses a method according to claim 1, wherein said periodic message is intended to cause said user to complete an exercise or use timer to complete an exercise (Diaz et al.; col. 18, lines 51-55).

H. As per claim 11, Diaz et al. discloses a method according to claim 1, further comprising providing said user with access to a predetermined exercise menu and receiving said user's exercise selections from said predetermined exercise menu. (Diaz et al.; col. 3, lines 5-9).

I. As per claim 12, Diaz et al. discloses a method according to claim 1, further comprising creating a record of said periodic message and said responsive information for subsequent access by said user (Diaz et al.; col. 15, lines 31-40).

J. As per claim 13, Diaz et al. discloses a method according to claim 1, further comprising selecting said at least one action from a predetermined menu of actions for automatic transmission to said user (Diaz et al.; col. 15, lines 12-17).

K. As per claim 14, Diaz et al. discloses a method according to claim 13, further comprising selecting a second action from a predetermined menu of actions for automatic transmission to said user (Diaz et al.; col. 18, lines 42-47).

L. As per claim 15, Diaz et al. discloses a method according to claim 14, wherein said second action is selected from said predetermined menu of actions based on said responsive information received from said user with respect to said status of said at least one action (Diaz et al.; col. 18, lines 39-47).

M. As per claim 16, Diaz et al. discloses a method according to claim 14, wherein at least one action and said second action are exercises (Diaz et al.; col. 18, lines 42-47).

N. As per claim 17, Diaz et al. discloses a system for facilitating a user activity (Diaz et al.; abstract), comprising:

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- i. A memory for storing digital data (Diaz et al.; col. 4, lines 28-33);
and
- ii. A processor in communication with the memory (Diaz et al.; col. 4, lines 28-33 and col. 13, lines 26-31); wherein the processor is operative of:
 - a. Receiving personalized information from a user related to a user activity (Diaz et al.; col. 13, lines 32-36), said personalized information including a user address (Diaz et al.; col. 5, line 65 to col. 6, line 40) and at least one communication guideline (Diaz et al.; col. 14, lines 62-66);
 - b. Automatically transmitting a periodic message to said user (Diaz et al.; col. 7, lines 7-10) consistent with said at least one communication guideline (Diaz et al.; col. 14, line 67 to col. 15 line 3), said periodic message intended to cause at least one action by said user related to said user activity (Diaz et al.; col. 15, line 4); and
 - c. Receiving responsive information from said user in response to said periodic message related to status of said at least one action (Diaz et al.; col. 15, line 4-5 and col.13, lines 42-44).

O. As per claim 18, Diaz et al. discloses a system according to claim 17, wherein said at least one action is an exercise, and wherein said memory contains an exercise menu (Diaz et al.; abstract and col. 1, lines 5-13) from which said processor selects said exercise for automatic transmission to said user (Diaz et al.; col. 15, lines 20-26).

P. As per claim 19, Diaz et al. discloses a system according to claim 18, wherein said processor selects said exercise from said exercise menu based on said user's personalized information (Diaz et al.; col. 15, lines 22-26).

Q. As per claim 20, Diaz et al. discloses a system according to claim 17, wherein said processor is further operative to provide additional periodic messages to said user, said additional periodic messages intended to cause additional actions on the part of said user, said additional actions reflecting said status of said at least one action (Diaz et al.; col. 18, lines 39-47).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz et al. (U.S. Patent No. 5,890,128) in view of Shea (U.S. Patent No. 6,050,924).

A. As per claim 2, Diaz et al. discloses a method according to claim 1, wherein said personalized information and responsive information are received, and said periodic message is automatically transmitted (Diaz et al.; col. 7, lines 7-10),

Diaz et al. fails to expressly teach the computer network, per se, since it appears that Diaz et al. is more directed to provide hand held personal computer, which generates tone and musical alarms with messages.

However, this feature is well known in the art, as evidenced by Shea.

In particular, Shea discloses an exercise system (Shea; abstract) wherein one or more exercise terminals are connected via a communications link to a central computer to form an exercise terminal network (Shea; col. 2, lines 64-66)

It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the personal hand held calorie computer which generates messages and exercise terminal with the motivation of developing an exercise profile and/or to set certain fitness goals with consultation with a fitness consultant (Shea, col. 3, lines 4-7).

B. As per claim 6, Diaz et al. discloses a method according to claim 1 (Diaz et al.; col. 1, lines 5-12), wherein said user address is an email address and said periodic message is automatically transmitted to said user by electronic mail

Diaz et al. fails to expressly teach the email address, per se, since it appears that Diaz et al. is more directed to provide hand held personal computer, which accepts a user's name, phone number, address, etc. to customize the program to the individual. However, this feature is well known in the art, as evidenced by Shea.

In particular, Shea discloses an exercise system (Shea; abstract) wherein the central computer may also utilize an e-mail link for communication to/from exercisers (Shea; col. 28, lines 36-37)

It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the personal hand held calorie

computer which generates messages and email link for communication with the exercisers with the motivation of a fitness consultant can quickly be made aware of possible problems in the exerciser's work habits or of some illness or injury preventing the exerciser from working out (Shea, col. 26, lines 17-21).

C. As per claim 10, Diaz et al. discloses a method according to claim 9, wherein said periodic message (Diaz et al.; col. 18, lines 51-55) provides a link to instructive information related to said exercise.

Diaz et al. fails to expressly teach the link to instructive information related to said exercise, per se, since it appears that Diaz et al. is more directed to provide hand held personal computer, which provides an extensive list of exercises and their calorie burning properties. However, this feature is well known in the art, as evidenced by Shea.

In particular, Shea discloses an exercise system (Shea; abstract) wherein one or more exercise terminals are connected via a communications link to a central computer to form an exercise terminal network (Shea; col. 2, lines 64-66), which supplies exerciser input to the central computer to generate exercise data that instructs the exerciser to perform exercise for some period of time (Shea; col. 10, lines 39-49)

It would have been obvious to one having ordinary skill in the art at the time of the invention to have combined the personal hand held calorie computer which generates messages and exercise terminal with the

motivation of remotely accessing to the exercise database (Shea, col.5, lines 62-63).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches an integrated system and method for ordering and cumulative results reporting of medical tests (6018713), iconic subscription schedule controller for a graphic user interface (6057834), enhanced medical treatment system (publication date: 20030055679), calorie calculator-chronometer (4100401), electronic calorie counter (4159416), electronic calorie counter 4192000, caloric and/or carbohydrate calculator (4244020), nutritional value accumulating and display device (4321674), diet calculator (4575804).
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dilek B. Cobanoglu whose telephone number is 571-272-8295. The examiner can normally be reached on 8-4:30.
7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dilek B. Cobanoglu
Art Unit 3626



JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER